

ELIAS HERNANDEZ MORALES

RMW 530
FILED
MAY 11 3:00
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name Hernandez morales. Elias
(Last) (First) (Initial)
Prisoner Number 72342-008
Institutional Address P. O Box 4000, Springfield miss.
65801

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Elias Hernandez morales
(Enter the full name of plaintiff in this action.)

08 2385

vs.

Case No. 44005 **RMW**
(To be provided by the clerk of court) **(PR)**

Marty Anderson, Warden
U.S. Medical Center for Federal
Prisoners
Springfield, mo
(Enter the full name of respondent(s) or jailor in this action)

**PETITION FOR A WRIT
OF HABEAS CORPUS**

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

- (a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

Del Rio Tx. 111 broad way 78840TX.
Court Location

- (b) Case number, if known 09400 SL.

- (c) Date and terms of sentence I broke in status
looking for

- (d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes ☒ No ☐

Where?

Name of Institution: Springfield miss. Medical Center

Address: Springfield miss. P.O. Box 4000-65801

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

CASE. Or Stenant for INS.
Aliens Immigration. Immigration

3. Did you have any of the following?

Arraignment:

Yes ☒ No ☐

Preliminary Hearing:

Yes ☐ No ☒

Motion to Suppress:

Yes ☐ No ☒

4. How did you plead?

Guilty ☐ Not Guilty ☒ Nolo Contendere ☐

Any other plea (specify) Guilty held.

5. If you went to trial, what kind of trial did you have?

Jury ☒ Judge alone ☐ Judge alone on a transcript ☐

6. Did you testify at your trial?

Yes ☒ No ☐

7. Did you have an attorney at the following proceedings:

(a) Arraignment

Yes ☒ No ☐

(b) Preliminary hearing

Yes ☐ No ☒

(c) Time of plea

Yes ☐ No ☒

(d) Trial

Yes ☐ No ☒

(e) Sentencing

Yes ☐ No ☒

(f) Appeal

Yes ☒ No ☐

(g) Other post-conviction proceeding

Yes ☒ No ☐

8. Did you appeal your conviction?

Yes ☒ No ☐

(a) If you did, to what court(s) did you appeal?

Court of Appeal

Yes ☒ No ☐

Year: 2006

Result: _____

Supreme Court of California

Yes ☒ No ☐

Year: 2007

Result: Docketed Chief. face

Any other court

Yes ☒ No ☐

Year: 2007

Result: I state for Trial.

(b) If you appealed, were the grounds the same as those that you are raising in this

petition?

Yes ☒ No ☐

(c) Was there an opinion?

Yes ☒ No ☐

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes ☒ No ☐

If you did, give the name of the court and the result:

Room 8112 110 South Church Av.
Tucson, AZ 85701-16

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes ☒ No ☐

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: SAN JOSE CA 1st Room 280, 95113
 Type of Proceeding: 2255 motion trial, appeal

Grounds raised (Be brief but specific):

a. The APPEAL, 2255.
 b. Have Indictment.
 c. Case: enter but not Seender
 d. for Case APPEAL.

Result: Cross-APPEAL Date of Result: 2002

II. Name of Court: TUCSON, AZ. Room 8112, 110 Church

Type of Proceeding: CASE: BR 400 SL

Grounds raised (Be brief but specific):

a. Loss or waiver of right

b. to Intervene.

c. Estoppel or duty to intervene:

d. exhaustion of remedies

Result: Notice of Arrignment Date of Result: 14-2-07

III. Name of Court: Del Rio tx.

Type of Proceeding: Motion Habeas Corpus 2255-2254.

Grounds raised (Be brief but specific):

a. 401. 70 AM Juv 2d. Pensions and

b. Retirement Funds. 456. 467

c. _____

d. affidavit

Result: _____ Date of Result: 14-2-07

IV. Name of Court: SAN FRANCISCO CA

Type of Proceeding: General Principles 1-4

Grounds raised (Be brief but specific):

a. 401. Am Juv Social. Security

b. and Medicare 1037 - 1140.

c. _____

d. _____

Result: Personal Earnings Date of Result: 4-4-07

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

Yes ☒

No ☐

Name and location of court: del Rio "Brooklyn" 78840

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: Annotations Modern Status and Appl.
6 ation of rule that only Voluntary transfer
7 Supporting Facts: 1946 (Soil conservation benif
8 fits.)

9
10
11 Claim Two: 34. Restatement (second) of Contract
12 7d 324. Comm. o.o.d.
13 Supporting Facts: Youngberg v El Paso Brick
14 Co. 155 S.W. 215 (Tex. Civ. App. El
15 Paso 1913.

16
17 Claim Three: 42. 53 Am Jur. 2d Military and
18 Civil Defense 179.
19 Supporting Facts: Forms; Answer - Denial
20 of Assignment - No
21 execution or delivery of instrument
22 2 Am Jur PLYR Forms (Rev) Assignment
23 Form 8

24 If any of these grounds was not previously presented to any other court, state briefly which
25 grounds were not presented and why:

26 order to Pay Proceed of Purchase order 2am
27 effect Various Statutes/legal. Form 2d Assignment
28 C. Delivery OR transfer 131-134 Research 15,16
References ALR Digest: Assignment 12, 15

1 List, by name and citation only, any cases that you think are close factually to yours so that they
 2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
 3 of these cases:

4 0294-0052 Cr. 4142 RMW.
 5 5,30400 CV:

6
 7 Do you have an attorney for this petition?

Yes ☒ No ☐

8 If you do, give the name and address of your attorney:

9 Manuel Pacheco 1700 Blbr. Beteranst.
Do. de las Flores del Rio TX.

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
 11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
 13 Executed on

3-4-08

14 Date

Elvis Hernandez m.

15 Signature of Petitioner

16
 17
 18
 19
 20 (Rev. 6/02)

28 USCS § 2254, n 760

was sufficient evidence to support petitioner's conviction for second degree felony murder when it was foreseeable that gun battle would be provoked by underlying armed robbery offense. *Santana v Kuhlmann* (2002, SD NY) 232 F Supp 2d 154.

In habeas corpus proceeding pursuant to 28 USCS § 2254 challenging conviction on one count of felony murder and four counts of robbery, inmate was not entitled to relief on his claim that there was insufficient proof that he acted with same intent as co-defendant to warrant his conviction on charge of felony murder; inmate's statements—that he planned to go to "weed house" to rob occupants of drugs and money—constituted sufficient evidence upon which rational fact finder could find that prosecution established, beyond reasonable doubt, that he formed intent to commit robbery and, therefore, was guilty of felony murder. *Lewis v Bennett* (2004, WD NY) 328 F Supp 2d 396.

761. —First degree murder

Question, that upon trial of petitioner for murder in which he was convicted of murder in first degree evidence was insufficient to justify court in submitting that degree to jury, could not be raised in a subsequent hearing on habeas corpus. *Crossley v California* (1898) 168 US 640, 42 L Ed 610, 18 S Ct 242.

Prosecution presented sufficient evidence to convict defendant of first-degree murder; although jury could have found killing was done solely in anger after finding girlfriend in house with unknown man, when evidence was viewed in light most favorable to prosecution, rational trier of fact could find necessary elements of crime (premeditation and deliberation) beyond reasonable doubt where record showed that defendant systematically abused victim's entire body for over an hour, leaving almost no part of victim unscathed. *Thomerson v Lockhart* (1987, CA8 Ark) 835 F2d 1257.

Evidence that habeas petitioner had placed gun in his pocket before victim picked him up, and that petitioner and victim had prior dispute over stereo speakers was sufficient to support petitioner's conviction of first-degree murder. *Scott v Elo* (2002, CA6 Mich) 302 F3d 598, 2002 FED App 301P, cert den (2003) 537 US 1192, 154 L Ed 2d 1026, 123 S Ct 1272, reh den (2003) 538 US 995, 155 L Ed 2d 697, 123 S Ct 1824.

In habeas corpus challenge to first-degree murder conviction, evidence was sufficient for rational juror to conclude that petitioner had requisite intent to kill, where petitioner accompanied co-defendant, who was armed with semiautomatic weapon, to residence; co-defendant also was armed with weapon and entered through door that had been kicked down; victims were shot repeatedly; although there was time to rob victims after homicides, petitioner and co-defendant walked back and forth in house; female victim's purse was taken, but money and personal

JUDICIARY & JUDICIAL PROCEDURE

property were found on victims; petitioner and co-defendant conversed in whispers after murders; and petitioner had blood on his shirt and was well acquainted with co-defendant. *Torres v Mullin* (2003, CA10 Okla) 317 F3d 1145, cert den (2003) 540 US 1035, 157 L Ed 2d 454, 124 S Ct 562, 2003 CDOS 9856, 2003 Daily Journal DAR 12381.

Given evidence supporting all three Anderson factors—planning, motive, and preconceived design—district court did not err in concluding that there was sufficient evidence to sustain special finding of premeditation to support prisoner's first-degree murder conviction; manner of killing—strangulation—would have required prisoner to apply pressure deliberately and steadily for at least three to five minutes; evidence of planning arose from prisoner's engineering assaults on two women in isolated areas where they could not easily escape or seek help; as for motive, jailhouse informant's testimony indicated that prisoner killed one of his victims so that he could have sex with her dead body or to eliminate possibility of her reporting rape or testifying against him. *Davis v Woodford* (2003, CA9 Cal) 333 F3d 982, 2003 CDOS 5475, 2003 Daily Journal DAR 6938, and on other grounds, reh den, reh, en banc, den (2003, CA9 Cal) 384 F3d 628 and reprinted as am'd (2004, CA9 Cal) 384 F3d 628, cert dismd (2005) 545 US 1165, 126 S Ct 410, 162 L Ed 2d 933.

State court decision affirming conviction of juvenile for aiding and abetting first-degree murder and attempted first-degree murder was unreasonable application of Fourteenth Amendment requirement that prosecution present evidence sufficient to prove every element of crime beyond reasonable doubt where record contained manifestly insufficient evidence to support necessary conclusions that juvenile knew that his brother planned to commit first-degree murders and that juvenile acted in way intended to encourage or facilitate these killings. *Juan H. v Allen* (2005, CA9 Cal) 408 F3d 1262, cert den (2006) 546 US 1137, 126 S Ct 1142, 163 L Ed 2d 1000 and cert den (2006) 546 US 1137, 126 S Ct 1145, 163 L Ed 2d 1000.

Eyewitness testimony that defendant was seen running from scene of murder, and evidence that hostile feelings existed between victim and defendant almost immediately prior to murder, is sufficient to sustain defendant's first-degree murder conviction. *Dickey v Dutton* (1983, MD Tenn) 595 F Supp 1.

First-degree murder convict is denied federal habeas relief, even though he alleges there was un rebutted evidence of self-defense, because state appellate court noted eyewitness testimony that convict initiated argument with victim and that victim had turned and started to walk away when convict stabbed him repeatedly in back, and rational trier of fact could have concluded that there was no serious provocation or sudden and intense passion which

PARTICULAR PROCEEDING

would justify reduction to. *Medley v Gramley* (1997, 1

762. —Second degree murder

State court's determination that fact could conclude beyond reasonable doubt that defendant, in prosecution of one person and attempted to great weight in federal review of record, Court of record supported state court petitioner's argument that to support his conviction. *Stalder* (1987, CA5 La) 83

State courts' determination that fact could conclude beyond reasonable doubt that defendant, in prosecution of one person and attempted to great weight in federal review of record, Court of record supported state court petitioner's argument that to support his conviction. *Stalder* (1987, CA5 La) 83

Second-degree murder habeas relief under 28 USC § 2254 could be drawn that (1) that was available to escape, (2) assisted escape (3) was at or near crime after crime was committed, failed to meet his burden, jury could have found him beyond reasonable doubt. *Mass* 981 F Supp 700.

Bandit tow-truck driver's relief, even though he could not sustain finding that "consequence" or "consequence" abandoned and malignant another vehicle, consequence because evidence was not implied malice and conviction murder, based on his driving and known inadequacy of *Contreras v Rice* (1998, C

Convicted murderer is denied federal habeas relief, where 2 witnesses testified to victim, "I told you and one saw convict thrust and saw victim clutch at fall to ground, because that this evidence established second-degree murder. *Steele v Walter* (1998, W Man convicted of second

RMW
550

FILED

APR 17 2008

RICHARD S. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT

Name Hernandez morales Elias
(Last) (First) (Initial)

Prisoner Number 72347-000

Institutional Address Medical Center P.O Box 4000
Springfield miss. 65801

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

United States America
(Enter the full name of plaintiff in this action.)

CV 08 1999

vs.

Case No. Cv. 9460 SL
(To be provided by the Clerk of Court)

**COMPLAINT UNDER THE
CIVIL RIGHTS ACT,
Title 42 U.S.C § 1983**

(PR)

Elias Hernandez Morales
(Enter the full name of the defendant(s) in this action)

E-filing

[All questions on this complaint form must be answered in order for your action to proceed..]

I. Exhaustion of Administrative Remedies.

[Note: You must exhaust your administrative remedies before your claim can go forward. The court will dismiss any unexhausted claims.]

A. Place of present confinement Springfield missouri

B. Is there a grievance procedure in this institution?

YES () NO (X)

C. Did you present the facts in your complaint for review through the grievance procedure?

YES () NO (✓)

D. If your answer is YES, list the appeal number and the date and result of the appeal at each level of review. If you did not pursue a certain level of appeal, explain why.

COMPLAINT

- 1 -

008-999 RMW

CV 08 1999

RMW
(PR)

U.S. District Court Northern California

ECF Registration Information Handout

The case you are participating in has been designated for this court's Electronic Case Filing (ECF) Program, pursuant to Civil Local Rule 5-4 and General Order 45. This means that you **must** (check off the boxes ☒ when done):

- ☐ **1) Serve** this ECF Registration Information Handout on **all** parties in the case along with the complaint, or for removals, the removal notice. DO NOT serve the efiler application form, just this handout.

Each attorney representing a party must also:

- ☐ **2) Register** to become an efiler by filling out the efiler application form. Follow ALL the instructions on the form carefully. If you are already registered in this district, do not register again, your registration is valid for life on all ECF cases in this district.
- ☒ **3) Email** (do not efile) the complaint and, for removals, the removal notice and all attachments, in PDF format within ten business days, following the instructions below. You do not need to wait for your registration to be completed to email the court.
- ☒ **4) Access** dockets and documents using **PACER** (Public Access to Court Electronic Records). If your firm already has a PACER account, please use that - It is not necessary to have an individual account. PACER registration is free. If you need to establish or check on an account, visit: <http://pacer.psc.uscourts.gov> or call (800) 676-6856.

BY SIGNING AND SUBMITTING TO THE COURT A REQUEST FOR AN ECF USER ID AND PASSWORD, YOU CONSENT TO ENTRY OF YOUR E-MAIL ADDRESS INTO THE COURT'S ELECTRONIC SERVICE REGISTRY FOR ELECTRONIC SERVICE ON YOU OF ALL E-FILED PAPERS, PURSUANT TO RULES 77 and 5(b)(2)(D) (eff. 12.1.01) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

All subsequent papers submitted by attorneys in this case shall be filed electronically. Unrepresented litigants must file and serve in paper form, unless prior leave to file electronically is obtained from the assigned judge.

ECF registration forms, interactive tutorials and complete instructions for efilng may be found on the ECF website: <http://ecf.cand.uscourts.gov>

Submitting Initiating Documents

PDF versions of all the initiating documents originally submitted to the court (Complaint or Notice of Removal, exhibits, etc.) must be **emailed (not efiled)** to the **PDF email box for the presiding judge** (not the referring judge, if there is one) **within 10 (ten) business days** of the opening of your case. For a complete list of the email addresses, please go to: <http://ecf.cand.uscourts.gov> and click on **[Judges]**.

You must include the case number and judge's initials in the subject line of all relevant emails to the court. You do not need to wait for your registration to email these documents.

These documents must be emailed instead of e-filed to prevent duplicate entries in the ECF system. All other documents must be e-filed from then on. You do not need to efile or email the Civil Cover Sheet, Summons, or any documents issued by the court at case opening; note that you do need to efile the Summons Returned.

Converting Documents to PDF

Conversion of a word processing document to a PDF file is required before any documents may be submitted to the Court's electronic filing system. Instructions for creating PDF files can be found at the ECF web site: <http://ecf.cand.uscourts.gov>, and click on **[FAQ]**.

Email Guidelines: When sending an email to the court, the subject line of the email **must** contain the **case number, judge's initials** and the **type of document(s)** you are sending, and/or the topic of the email.

Examples: The examples below assume your case number is 03-09999 before the Honorable Charles R. Breyer:

Type of Document	Email Subject Line Text
Complaint Only	03-09999 CRB Complaint
Complaint and Notice of Related Case	03-09999 CRB Complaint, Related Case
Complaint and Motion for Temporary Restraining Order	03-09999 CRB Complaint, TRO

Questions

Almost all questions can be answered in our **FAQs** at **<http://ecf.cand.uscourts.gov>**, please check them first.

You may also email the ECF Help Desk at ECFhelpdesk@cand.uscourts.gov or call the toll-free ECF Help Desk number at: (866) 638-7829.

The ECF Help Desk is staffed Mondays through Fridays from 9:00am to 4:00pm Pacific time, excluding court holidays.

NAME: _____ "REQUEST FORM" NUMBER: _____ DATE: _____

CHECK OUT ONLY FOUR (4) BOOKS AT A TIME, TO BE USED IN THE LAW LIBRARY ONLY!

<u>Federal Supplement</u>	<u>Federal Reporter 2d</u>	<u>Federal Reporter 3d</u>	<u>L.Ed. 2d</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
<u>Title 18 U.S.C.</u>	<u>Title 21 U.S.C.</u>	<u>Title 28 U.S.C.</u>	<u>Title 42 U.S.C.</u>
_____	_____	_____	_____
Fed. R. Cv. Procedure _____	Federal Rules Cr. Procedure _____		
Criminal Law Reporter _____	American Jurisprudence _____		
Sentencing Guidelines _____	Program Statement _____		
1994 Violent Crime Act _____	28 Code of Federal Regulations _____		
U.S. Parole Board Rules _____	Telephone Regulations _____		
OTHER United States Code Annotated _____	OTHER REQUESTS _____		

PLACE EITHER THE SPECIFIC NUMBER OF THE BOOK, OR AN X NEXT TO TITLE.

PLEASE BE PATIENT, WE CAN ONLY SERVE ONE PERSON AT A TIME!

VENDING CREDITS

\$1.00 INCREMENTS \$ _____ .00

1. Vending Credits sold for legal copy machine use.
 2. Debit Vending is a USER RISK program.
 3. It is the INMATES RESPONSIBILITY to spend remaining card balance and/or have remaining balance zeroed prior to transfer or release.
- *****

PHOTO TICKETS

_____ \$ 1.00 EA
LIMIT 10

STAMPS:

_____ 20/.41 CENT (\$ 8.20)
(MAXIMUM OF 1 BOOK)

_____ 5/.17 CENT BOOK (\$.85)

_____ 50/.01 CENT BOOK (\$.50)

_____ 5/ \$1 STAMP BOOK (\$ 5.00)

A MAXIMUM OF \$24.60 MAY BE PURCHASED
PER WEEK.

NAME: _____

UNIT: _____ REG.# _____

DATE: _____

JS 44 - CAND (Rev. 11/04)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

I. (a) PLAINTIFFS**DEFENDANTS**

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input checked="" type="checkbox"/> 3 | <input checked="" type="checkbox"/> 3 | Foreign Nation | <input checked="" type="checkbox"/> 6 | <input checked="" type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ Original Proceeding
☐ Removed from State Court
☒ Remanded from Appellate Court
☐ Reinstated or Reopened
☐ Transferred from Another district (specify)
☐ Multidistrict Litigation
☐ Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input checked="" type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 198 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl./Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 419 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ACC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input checked="" type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Amer w/ disab - Empl <input type="checkbox"/> 446 Amer w/ disab - Other	PRISONER PETITIONS <input checked="" type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

VII. REQUESTED IN COMPLAINT: ☒ CHECK IF THIS IS A CLASS ACTION DEMAND \$[] CHECK YES only if demanded in complaint:

UNDER F.R.C.P. 23

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND☐ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

8-4-2008

ALIA Lodiom

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44
Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases. Date and Attorney Signature.

Date and Attorney Signature. Date and sign the civil cover sheet.